

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

In re:

Drain Services, Inc.,

Bankruptcy No. 23-30352
Chapter 11, Subchapter V

Debtor.

DEBTOR'S RESPONSE TO CHOICE FINANCIAL GROUP'S DEFAULT MOTION

Drain Services, Inc. ("Debtor") submits this response to the default motion of Choice Financial Group ("Choice Bank"). Choice Bank alleges payment and reporting violations under Drain Services, Inc.'s Second Amended Subchapter V Plan of Reorganization [Doc. 142] (the "Plan"). Debtor will address each of these allegations in turn.

A. Debtor has cured the payment obligation as required by Section 8.05 of the Plan.

Debtor acknowledges that, as of the filing date of Choice Bank's motion, it had not yet made its October payment to Choice Bank, but Debtor was able to make its \$4,689.28 payment on Thursday, November 7, 2024, and believes that it will be able to make its payments in a timely manner going forward. Pursuant to the terms of the Plan, Choice Bank provided the required notice of default to Debtor and Debtor failed to cure within ten (10) calendar days following Debtor's receipt of the notice of default. Choice Bank was then authorized to bring the present motion for default, which it did. Debtor, however, is authorized to cure within thirty days' of being given the written notice of default pursuant to the terms of Section 8.05 of the Plan. Accordingly, with respect to the Debtor's payment obligation, the default is now cured, and the Debtor's motion is moot.

While the Debtor's motion is now moot, Debtor believes it is important to put this default in context with the situation. As required by the Bankruptcy Code, Debtor has pledged its free cash flow to its creditors. Accordingly, when Debtor's customers do not timely pay it, Debtor experiences a cash flow crunch. This occurred in October because one of Debtor's large customers changed its facilities management contractor, and payments were delayed as a result of the changeover. That issue has now been cleared up. In addition, as the Court may be aware, Debtor was required to commence litigation to collect an unpaid bill from Joseph and Cecilia Pfau. That matter, too, has been resolved and the motion for approval of the settlement agreement was filed on October 21, 2024. [Doc. 174]. The last day to file objections to the settlement is November 12, 2024, the day after this response is due. We expect that there will be no objection to the settlement, and Debtor will receive its initial payment of \$21,500 that can be used to both bring current the \$5,017.38 in fees remaining due to its former attorney, Maurice VerStandig, and to ensure that it will have funds to pay Choice Bank going forward.

B. Choice Bank Inappropriately Claims Defaults in Debtor's Reporting Obligations.

Contrary to Choice Bank's allegation, Debtor has fully complied with Section 8.07 of the Plan, which requires Debtor to file on the docket (i) an unaudited statement of profit and loss for the most recently concluded calendar quarter; (ii) an unaudited balance sheet as of the last business day of the most recently concluded calendar quarter; and (iii) when the Debtor has caused a federal tax return to be filed at any time during the most recently concluded calendar quarter, a copy of said federal tax return. As an initial matter, the Debtor did not file a tax return during the calendar quarter ended September 30 and, therefore, did not breach any reporting obligation. Furthermore, as Choice Bank recognized in its motion, Debtor did file unaudited balance sheets (Doc. 166 and 170) and income statements (Doc. 167 and 171). Choice Bank's

only real objection is that, in their opinion, the financial statements are not sufficient. While there are no qualitative standards included in the Plan, the Debtor is concurrently filing a signed declaration representing (i) that the filed financial statements represent the information presently included in its QuickBooks accounting system, and (ii) that it is working with its accountants, Arrow Advisors, to create a system that will allow it to prepare and present more detailed financial statements going forward.

Based on the foregoing, Debtor respectfully requests that Choice Bank's motion for default judgment be denied.

AHLGREN LAW OFFICE, PLLC

Dated: November 11, 2024

/s/ Erik A. Ahlgren
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Attorneys for Debtor

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

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Debtor.

**DECLARATION OF KEVIN CAMERON OF DRAIN SERVICES, INC. IN SUPPORT
OF DEBTOR’S RESPONSE TO CHOICE FINANCIAL GROUP’S DEFAULT MOTION**

I, Kevin Cameron, declare as follows:

1. I am the Vice President of Drain Services, Inc. (“Debtor”). I am personally familiar with the information stated in this Declaration, and am authorized to make the representations stated herein. This Declaration is submitted in support of Debtor’s response to the default motion of Choice Financial Group (“Choice Bank”) being filed pursuant to Drain Services Inc.’s Second Amended Subchapter V Plan of Reorganization [Doc. 142] (the “Plan”).
2. I have reviewed the Debtor’s Response to Choice Financial Group’s Default Motion as prepared by Debtor’s attorney and all the facts stated therein are true and correct.
3. On November 7, 2024, I mailed a check to Choice Bank on behalf of Debtor in the amount of \$4,689.28, as part of Debtor’s duties under the Plan.
4. At my direction, Debtor prepared financial statements for the first two quarters of 2024 and those statements were filed with the Court [Docs. 166,167,170,171], as part of Debtor’s duties under the Plan.

5. The financial statements filed with the Court represent the information presently included in Debtor's QuickBooks accounting system and, to the best of my knowledge, information and belief, comply with Debtor's obligations under the Plan.

6. While I believe the financial statements filed with the court comply with Debtor's obligations under the Plan, I am working with Arrow Advisors to prepare more detailed financial statements going forward.

7. I have been informed by Arrow Advisors that Debtor's taxes are in process should be finished by the end of November.

I declare under penalty of perjury that the foregoing is true and correct.

November 11, 2024



Kevin Cameron

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

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Drain Services, Inc.,

Debtor.

Case No.: 23-30352

Chapter 11, Subchapter V

CERTIFICATE OF SERVICE

I, Lisa Ahlgren, declare she caused to be served the following documents in connection with the above-referenced adversary proceeding:

Debtor's response to Choice Financial Group's Default Motion

By CM/ECF to:

- ERIK A. AHLGREN erik@ahlgrenlawoffice.net,
lisa@ahlgrenlaw.net;michael@ahlgrenlaw.net;eaa@trustesolutions.net
- John William Baker john.baker@sba.gov
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- Sarah J. Wencil sarah.j.wencil@usdoj.gov

Executed on: November 11, 2024

Signed: /s/Lisa Ahlgren

Lisa Ahlgren
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